

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION**

MICHAEL STOCKDALE,)
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Plaintiff,)
)
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v.) No. 1:06-CV-25 CAS
)
)
CHUCK DWYER, et al.,)
)
)
Defendants.)

MEMORANDUM AND ORDER

This matter is before the Court on plaintiff's motion for leave to file an amended complaint.

The defendants have not filed a response, and the time to do so has passed. Plaintiff's motion will be granted for the following reasons.

Although leave to amend is to be freely granted under Federal Rule of Civil Procedure 15(a), the Court has discretion whether or not to grant leave to amend. Zenith Radio Corp. v. Hazeltine Research, Inc., 401 U.S. 321, 330-32 (1971). Factors to consider in determining whether leave to amend should be granted include but are not limited to (1) whether the motion was filed in bad faith or with dilatory motive; (2) whether the motion was filed with undue delay; (3) whether leave to amend would be unduly prejudicial to the opposing parties; and (4) whether the proposed amendment would be futile. See Bell v. Allstate Life Ins. Co., 160 F.3d 452, 454 (8th Cir. 1998) (citing Foman v. Davis, 371 U.S. 178, 182 (1962)); Williams v. Little Rock Municipal Water Works, 21 F.3d 218, 224 (8th Cir. 1994).

The Court has reviewed plaintiff's proposed amended complaint, and in the absence of any opposition by the defendants, concludes that leave to amend should be granted. There is no

indication of bad faith, dilatory motive or undue delay, there is no assertion of prejudice by the defendants, and it does not appear from the face of the proposed amended complaint that its filing would be futile.

The Court will not, however, permit plaintiff to file the “Memorandum of Law in Support of This Amended Complaint” which he submitted along with the amended complaint. Rule 7 of the Federal Rules of Civil Procedure specifies the pleadings which are permitted to be filed in a federal civil case. The Rule states:

There shall be a complaint and an answer; a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if a person who was not an original party is summoned under the provisions of Rule 14; and a third-party answer, if a third-party complaint is filed. **No other pleading shall be allowed**, except that the court may order a reply to an answer or a third-party answer.

Rule 7(a), Fed. R. Civ. P. (emphasis added). The Federal Rules do not contemplate a party filing a memorandum in support of a complaint.

Because the Court has granted plaintiff leave to file his amended complaint, pending motions pertaining to the original complaint should be denied as moot, see Pure Country, Inc. v. Sigma Chi Fraternity, 312 F.3d 952, 956 (8th Cir. 2002), without prejudice to the filing of motions concerning the amended complaint. Defendant Crawford’s motion to dismiss filed in response to the original complaint should therefore be denied as moot.

Accordingly,

IT IS HEREBY ORDERED that plaintiff’s motion for leave to amend his complaint is **GRANTED**. [Doc. 22]

IT IS FURTHER ORDERED that the Clerk of the Court shall docket the proposed amended complaint, which is attached to plaintiff's motion for leave to amend (the first six pages of the attachment), but shall not docket the "Memorandum of Law in Support of This Amended Complaint" (the final three pages of the attachment) and shall delete the same from the record.

IT IS FURTHER ORDERED that defendant Crawford's motion to dismiss directed to the original complaint is **DENIED as moot, without prejudice.** [Doc. 13]



CHARLES A. SHAW
UNITED STATES DISTRICT JUDGE

Dated this 6th day of September, 2006.